IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

CRP.No. 662 of 2000(E)

(S.M..1407/1978 of TALUK LAND BOARD, PALAKKAD)

REVN. PETITIONER/DECLARANT:

K. VELAYUDHAN, AGED 43 YEARS,
S/O. K. BALAKRISHNAN,
ENDRAKODEKALAM, RAMASSERY AMSOM,
ELAPPULLY II VILLAGE, PALAKKAD.

BY ADV. SRI.T.M.CHANDRAN
ADV. SRI.S.SUJITH

RESPONDENTS/RESPONDENTS:
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1. TALUK LAND BOARD, PALAKKAD.

2. TAHSILDAR, PALAKKAD.

3. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF KERALA, TRIVANDRUM.

BY GOVERNMENT PLEADER ADV. SHRI THOMAS JOHN AMBOOKEN.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P. NO. 662 OF 2000

ORDER ON C.M.P. NO. 1379 OF 2000 IN C.R.P. NO. 662 OF 2000

DISMISSED.

19.12.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 662 OF 2000

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Dated this the 19th December , 2007

O R D E R

The questions involved in this Revision are:

1) Whether a member of the statutory family as defined in Section 2(14) of the Kerala Land Reforms Act could maintain an application under Section 85(8) of the said Act?

2) Whether a claimant under Section 85(8) could base his claim on an oral gift which was followed by a registered deed?

3) Was the Taluk Land Board justified in rejecting the claim petition under Section 85(8) on the ground that the declarant did not raise the contention as is raised by the claimant on the basis of the gift deed?

2. Ceiling proceedings were initiated in S.M.No. 1407/1978 , Taluk Land Board, Palakkad against the declarant, namely, Balakrishnan . The statutory family of the declarant consisted on his wife and four children. The Taluk Land Board passed final order holding that the declarant is liable to surrender excess land . The matter did not become final as the declarant filed revisions after revisions against successive orders passed by the Taluk Land Board. Four Civil Revision Petitions were filed by the declarant , the last of which was disposed of on 04.08.1999 in C.R.P.No.1551 of 1999. The matter was thus concluded by holding that the declarant is liable to surrender an extent of 4.26 acres.

3. On 10.08.1999, the revision petitioner, who is the son of the declarant and who is also included as a member of the statutory family of the declarant, filed an application under section 85(8) of the Kerala Land Reforms Act claiming title under a gift deed dated 27.11.1975 executed in his favour by the declarant. The Taluk Land Board rejected the claim petition as per the order impugned in this revision stating that the declarant did not raise any contention that he had executed a gift deed in favour of the claimant. The Taluk Land Board held that by the dismissal of C.R.P.No. 1551 of 1999, the claim petition would not be maintainable.

4. **Point No.1:** The Revision petitioner/claimant is a member of the statutory family of the declarant. The family is defined under section 2(14) of the Kerala Land Reforms Act as follows:

> *" "family" means husband, wife and their unmarried minor children or such of them as exist."*

The ceiling area under the Act is as provided in Section 82 of the Act, wherein different categories are dealt with. The ceiling area in so far as a family is concerned is also provided in Section 82 (1)(b) and (c) of the Act. Sub-section (2) of Section 85 provides that where a person owns or holds land in excess of the ceiling area, such person shall file a statement before the Land Board . Sub-section (3A) also provides for filing statements in certain other contingencies. Sub-Section (7) of Section 85 states that where any person fails to file a statement specified under sub-section (2) or sub-section (3A) , the Land Board shall intimate that fact to the Taluk Land Board and thereupon the Taluk Land Board shall, after necessary enquiries, by order, determine the extent and other particulars of the land, the ownership or possession or both of

which is or are to be surrendered. The proviso to Section 85(7) states that before such determination, the Taluk Land Board shall give an opportunity to the persons interested in the land to be heard. A statement to be filed under sub-section (2) of Section 85 shall be filed as provided in sub-section (2A). In the case of a family, the statement shall be filed by the husband or in his absence, the wife or in the absence of both, the guardian of the minor children . In the case of a statement filed under sub-section (2A) or sub-section (3A) , the Taluk Land Board shall dispose of the application under sub-section (5) and by order determine the extent and identity of the land to be surrendered. Section 85(8) provides that where the Taluk Land Board determines the extent of the land to be surrendered by any person without hearing any person interested, such person may, within sixty days from the date of such determination, apply to the Taluk Land Board to set aside the order.

5. A statutory family can be represented by the husband or the wife or in the absence of both, the guardian of the minor children. Going by the scheme of Section 85, in a suo motu proceedings, it is sufficient if notice of the proceedings is given to the husband or in his absence to the wife. Notice to the minor children arises only in the absence of the husband or the wife. A family is represented by the husband who is the head of the family and in his absence, by the wife. When a final order is passed by the Taluk Land Board, it shall be after ascertaining whether the declarant/assessee owns or holds excess land. After such determination, the Taluk Land Board shall determine the extent and identity of the land to be surrendered. For the purpose of calculating the ceiling area, the land owned by every member of the statutory family shall be put together, since sub-section (2) of Section 82 provides that for the purpose of Chapter

III of the Act dealing with the ceiling area, all the lands owned or held individually by the members of a family or jointly by some or all of the members of such family shall be deemed to be owned or held by the family. Even if a minor member of the statutory family owns any land that shall be included in computing the ceiling area. The relevant date with reference to which ceiling area is to be determined is 01.01.1970. The above provisions would clearly show that a member of the family, who is also included in the statutory family for the purpose of computing the ceiling area, is a person, who is bound by the final determination under Section 85(5) or 85(7) of the Act and he cannot be a person interested within the meaning of sub-section (8) of Section 85.The effect of entertaining an application under sub-section (8) of Section 85 is to set aside the order and to proceed with the case under sub-section (5) or sub-section (7). Such a course could be adopted only on the application of an interested person who is not a member of the statutory family in respect of which the ceiling area is to be determined . Or else, every member of the family could, after final determination, approach the Taluk Land Board with a petition under Section 85(8) to get nullified the effect of final determination . Section 85(8) is intended to protect the interests of the persons who are not parties to the ceiling proceedings and whose interests are affected by the final determination by the Taluk Land Board under Section 85(5) or 85(7), as the case may be. Section 85(8) is not intended for the benefit of a person who is bound by the final determination. The learned counsel for the petitioner submitted that even a member of the family could file a claim petition and in support of that contention, relied on the decision in ***Velayudhan vs. State of Kerala*** **(1981 K.L.T. 696)** . He referred to paragraph 9 of the decision which reads as follows:

"9. I shall now deal with the submission of learned Government

Pleader that only a stranger can seek the aid of S.85(8) and the revision petitioner who is the son of the person involved in the ceiling case is not a person interested and cannot apply under S.85(8). Any person having a right or claim in land is a person interested in land. There is nothing in the expression "interested" or the provisions in sub-section (8) to warrant the view that only a stranger can apply thereunder. Rule 12(2) of the Ceiling Rules provides for individual notice in Form 3 to all persons, so far as may be, having or likely to have any claim to or interest in lands included in the draft statement. When such notice is not sufficient or effective or practicable, Rule 12(3) requires public notice in Form 4 to be published in two daily newspapers. Notice in Form 3 requires the addressee to appear before the Taluk Land Board and participate in the enquiry. Notice in Form 4 directs any person having claim or interest in land to file objections and appear before the Taluk Land Board in support of objections. These provisions show that it is open to any interested person, he be a member of the family of the person involved in the ceiling case, or his son or daughter, etc, or a tenant or a rival claimant to title or a co-owner to appear before the Taluk Land Board and put forward his claim or objection and require it to be adjudicated. If inspite of a public notice, he does not come to know that the land over which he has a claim is involved in a ceiling case, naturally he will have no opportunity to urge his claim before order is passed. His interest is however safeguarded by sub-section (8) of S.85, subject to the conditions stipulated therein. On this understanding of the purpose and scope of S.85(8), it is difficult to agree that the remedy provided thereunder can be availed of only by a "stranger" like a person claiming tenancy or rival title and not by member of the family or children having claim over the land. I hold that if the revision petitioner, who is the son of the 4th respondent , has a claim over any part of the land directed to be surrendered and satisfies the other conditions in S.85(8), he is entitled to secure the remedy provided therein."

Paragraph No.1 of the said decision would indicate that a claim petition was filed by the declarant's major son. He raised the contention that the land, which according to the Taluk Land Board belonged to his mother, did not belong to her but belonged to his family. The fact situation in ***1981 KLT 696*** is different. The claimant therein is not a member of the statutory family, but a member who had attained majority. He contended that the land included in the ceiling case does not fully belong to the statutory family but certain others also have right in the property. This is certainly a contention which could be raised by any member of the family who would get a right in the family property. It is in that context, in ***1981 KLT 696*** it was held in the manner indicated above. I am of the view that ***1981 KLT 696*** is not an authority for the proposition that even a member of the family, who is included in the statutory family and the ceiling area of which is finally determined by the Taluk Land Board, would be entitled to file a claim petition under section 85(8), after the final determination under Sections 85 (5) and 85(7) of the Act.

6. **Point No.2:** The title claimed by the claimant under section 85(8) is that his father, who was the declarant/assessee in the case, orally gifted the property in question in favour of the claimant in the year 1973 and later executed a registered gift deed dated 27.11.1975. Shri T.M. Chandran, learned counsel appearing for the revision petitioner submits that the gift deed relates back to the date when oral gift was made in favour of the claimant and if so, Section 84 (1A) of the Kerala Land Reforms Act would apply which saves a gift executed between 01.01.1970 and 05.11.1974.

7. I am not inclined to agree with the submission of the learned counsel for the

petitioner for the following reasons: Section 84 (1A) applies only to a voluntary transfer effected by means of a gift deed. In order to attract sub-section (1A) of Section 84, there must be a gift deed. That gift deed must be one which was executed during the period commencing on the 1st day of January 1970 and ending with the 5th day of November, 1974. Moreover, the proviso to sub-section (1A) of Section 84 states that sub-section(1A) shall not apply to a transfer in favour of a person who was an unmarried minor on the first day of January, 1970. The claimant/revision petitioner being a member of the statutory family, certainly he was a minor as on 01.01.1970. Thus it is clear that the ingredients of sub-section (1A) of Section 84 are not made out by the petitioner.

8. Another reason to reject the contention raised by the petitioner is that a Hindu can validly create a gift only as provided under sections 122 and 123 of the Transfer of Property Act. "Gift" as defined in Section 122 of the Transfer of Property Act is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration by one person, called the donor, to another, called donee, and accepted by or on behalf of the donee. Section 123 provides that for the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses . To constitute a valid gift, there must be a registered instrument as provided under section 123 of the Transfer of Property Act. If there is no valid gift as provided under Section 123, the donee would not get any title to the property. An oral gift of immovable property is not contemplated under the Transfer of Property Act. As section 123 of the Transfer of Property Act specifically provides for the mode of transfer

by way of a gift, there could be no other method by which a valid gift could be made. Mere delivery or possession, without there being a written instrument signed by or on behalf of the donor and attested by at least two witnesses, cannot confer any title on the donee. (See **: Wg. Cdr. (Retd.) R. N.Dawar V. Shri Ganga Saran Dhama :AIR 1993 DELHI 19**).

9. Point No.3: The Taluk Land Board was not justified in rejecting the claim petition on the ground that the matter was already decided finally and the order was challenged unsuccessfully by the assessee in Revision. That a final order was passed and that it was confirmed in revision is not a ground for not entertaining an application under Section 85(8). Section 85(8) opens with the words *"Where the Taluk Land Board determines the extent of the land to be surrendered by any person without hearing any person interested".* The final determination without hearing the person interested gives right to such person interested to file a claim petition. Only because a final order was passed and that the said final order was confirmed in revision, the Taluk Land Board cannot reject a claim petition. Section 85(8) is intended to protect the interests of persons who are likely to be affected by the determination of a ceiling case by the Taluk Land Board. The rights of a claimant would not be defeated due to the failure of the declarant/assessee in raising a contention that he had transferred lands to the claimant. There may arise cases where, in spite of a valid transfer made by the declarant/assessee to a stranger, the former may keep quiet and may not disclose the transfer before the Taluk Land Board. It may also happen, in such cases, that the Taluk Land Board may, by the final determination, decide to take possession of such land which was voluntarily transferred by the declarant/assessee to the stranger. If it

were to be held that a final determination by the Taluk Land Board and confirmation of the order in revision would deprive a claimant from putting forward his claim, Section 85(8) would become otiose. Section 85(8) is intended to meet the contingency where, by the decision of the Taluk Land Board, interests of a person who was not a party before it, are likely to be affected. Section 85 (8) protects the interests of such person by affording an opportunity to put forward his claim in the very same ceiling proceedings without taking recourse to separate proceedings. Chapter III of the Kerala Land Reforms Act does not provide for initiation of any separate proceedings at the instance of the persons who are affected by the final determination. On the other hand, the provisions in Chapter III would indicate that all the claims in respect of the lands included in the ceiling case shall be decided by the Taluk Land Board itself. The above conclusion, according to Advocate Shri Chandran, must lead to an order setting aside the order of the Taluk Land Board with a direction to the Taluk Land Board to decide the matter afresh. Normally it would be so. But, as held under point Nos. 1 and 2, the revision petitioner is not entitled to maintain a claim petition under section 85(8) of the Act and he cannot also claim any valid title in respect of the land. Therefore, I am not inclined to remand the case to the Taluk Land Board for a fresh consideration.

10. Shri T.M. Chandran, learned counsel for the revision petitioner, submits that the decision in respect of the validity of the gift may be confined to the ceiling case . He submits that the registered gift deed is otherwise valid and it would be invalid only for the purpose of the ceiling case. It is made clear that I have considered the validity of the gift deed only in so far as the ceiling case is concerned.

For the aforesaid reasons, the Civil Revision Petition is dismissed. No order as to costs. The original of the gift deed produced by the petitioner in this revision shall be returned to the revision petitioner.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 662 OF 2000.

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Dated this the 19th December, 2007

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